

# EXHIBIT M

# *Service Academies Defend Use of Race in Their Admissions Policies*

By Adam Clymer

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Even as the Bush administration sides with opponents of affirmative action at the University of Michigan, officials of the nation's service academies say their own minority admissions programs are necessary to maintain both integrated student bodies and officer corps.

By defending policies that are not "race neutral," the admissions officers appear to contradict their commander in chief. On Jan. 15, President Bush criticized Michigan's policies, which he said gave preference to some applicants "not because of any academic achievement or life experience, but solely because they are African-American, Hispanic or Native American."

While the academy officials would not discuss the Michigan case, several outside legal experts argue that the administration's legal theories in briefs it filed with the Supreme Court in the case raise serious questions about the procedures at the elite training grounds for future military leaders at West Point, Annapolis and Colorado Springs.

Expressing similar concerns, a group of retired senior officers is planning to file a friend-of-the-court brief next month warning against any Supreme Court ruling that could imperil the academies' contribution to the integrated officer corps.

The Army, Navy and Air Force academies make strenuous efforts to achieve freshman classes with significant minority representation, though only West Point says it has specific percentage goals. Each recruits extensively, gives minorities an edge on admissions and bolsters their ranks by sending promising candidates who fall just short of their standards to one-year preparatory schools. Some enlisted personnel and athletes also attend those schools.

At each academy, which the federal government operates, admissions officers cited two main reasons for racial diversity in admissions, one singular to the military and one widely heard in higher education.

The familiar argument, as expressed by Col. Michael L. Jones, dean of admissions at West Point, is: "We like to represent the society we come from in terms of the student body's undergraduate experiences. So having a diverse student body allows personal growth in areas where people may not have gotten it otherwise. We want people to understand the society they will defend."

The military argument is that with racial minorities making up from 28 percent of the enlisted personnel in the Air Force to 44 percent in the Army, almost all-white ranks of officers would hurt morale.

"We want to build an officer corps," said Dave Vetter, the Naval Academy dean of admissions, that "reflects the military services of which we are a part." Colonel Jones said, "Officers of color are important as role models in the Army."

The Bush administration briefs in the Michigan case argued this month that the extra points given to minority undergraduate applicants and the less specific preferences given to minority law school applicants violated the constitutional guarantees of equal protection of the law. While the briefs said diversity in higher education was important, they suggested only one specific "race-neutral" way to achieve it, a system of admitting a specific percentage of students from every high school in a state that would not be applicable to national institutions like the academies.

Eric Schnapper, a law professor at the University of Washington, called the administration's insistence on race-neutral methods "a dagger in the heart of what the service academies are doing."

According to the administration's theory, said Walter E. Dellinger, a former acting solicitor general, "a program that is designed to increase minority enrollment is itself race based."

"What the academies apparently do would not withstand the application of the standards in these briefs," Mr. Dellinger said.

Asked to comment on these concerns, the Justice Department neither agreed nor disagreed. Monica Goodling, a spokeswoman for the department, said: "The administration believes that racial diversity can and should be encouraged in higher education, without falling back on unconstitutional quotas. However, the only admission system the Justice Department has reviewed is the one at issue in Michigan, and the conclusions in our briefs were written to address their specific admissions systems. Absent litigation, the department would not comment on other systems, other than to note that the president has committed this administration to actively promote diversity and opportunity in every way that the law permits."

One particular argument that might be made for the service academies' efforts is that the national defense need for an integrated officer corps would outweigh equal protection concerns. Lee C. Bollinger, the legal scholar who is president of Columbia University (and the named defendant in the Michigan case, because he was president of that university when the suits were filed) said: "You could argue national defense is different from education. I find it difficult to believe it would succeed. There is no question that it would be a very hard case to make."

The retired officers who intend to file a brief have not settled on their arguments in the 30 pages permitted by the Supreme Court, but they began their efforts well before the administration took a stand.

While the administration briefs do not demand overruling the Supreme Court's 1978 Bakke decision, which barred fixed quotas but allowed race to be a consideration, the private plaintiffs in the case do want that ruling reversed. The military plaintiffs will call for affirming Bakke.

The generals and admirals would not agree to have their names made public now. But James M. Cannon, former chairman of the Naval Academy Board of Visitors under Presidents Ronald Reagan and George Bush, said many of their names would be familiar. Mr. Cannon has worked to recruit signers.

Race matters, openly, in the admissions process at all three service academies. At West Point, Colonel Jones said: "Race might be a small edge. It's one of the considerations. We have goals for soldiers, for females, for recruited athletes, for minorities, for scholars and for leaders. We never hit our African-American goal of 10 to 12 percent. We normally hit 7 to 9 percent."

Critics of affirmative action consider "goals" equivalent to "quotas." And the administration's brief denounces the Michigan law school's slightly different term of a "target" of minority representation. It said, "The fact that the law school's target may be a range, rather than a fixed percentage, does not make it any less a quota."

Mr. Bollinger of Columbia said that meant clearly that it was impermissible "for the military to say they have a goal of reaching 10, 12 percent."

At the Air Force Academy, Rollie Stoneman, associate dean of admissions, said the academy did not have percentage goals, except for a minimum of applicants medically qualified for pilot training. On race, Mr. Stoneman said, "we don't give any specific points in the process, but certainly it's one of any number of factors we consider."

At the Naval Academy, Mr. Vetter acknowledged that race was a factor, though without particular goals. "Everybody that receives an offer to the academy has to be fully qualified," he said. "But beyond that, we want a brigade that reflects our country, geographically diverse, we want it to be diverse in other regards, too." Of 299 minority students in the current first-year class, he said, only 78 are African-American, and "that probably is our greatest challenge."

The academies acknowledge that most of the minority students they seek could usually win full scholarships at private institutions that did not wake them up before dawn or expect them to serve five years of active duty after graduation.

So they all rely on recent or current minority undergraduates, recent graduates assigned to the academies and other alumni to make the case that a service academy education is worth the sacrifices and to coach applicants through the complicated admissions process that requires Congressional nominations and intense physicals that civilian institutions do not demand.

And all three send some candidates to their prep schools, in Newport, R.I., for the Navy; in Fort Monmouth, N.J., for the Army; and at Colorado Springs, on the Air Force Academy campus. At Annapolis, Mr. Vetter said, the purpose was "to give them a little extra strength in the academic areas that we emphasize in the academy."

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